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02-28-08
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OF THE STATE OF CALIFORNIA**

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**STATE OF CALIFORNIA
ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION**

AB 32 Implementation	Docket No. 07-OIIP-01

COMMENTS OF THE COALITION OF CALIFORNIA UTILITY EMPLOYEES ON PRESIDENT PEEVEY'S PROPOSED DECISION REGARDING GREENHOUSE GAS REGULATORY STRATEGIES

February 28, 2008

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Pursuant to Rule 14.3, the Coalition of California Utility Employees offers these comments on the Proposed Decision of President Peevey regarding California's greenhouse gas regulatory strategies**.**

The Coalition of California Utility Employees (CUE) appreciates the opportunity to submit comments on this Proposed Decision (PD). CUE's member unions represent employees of essentially all electric utilities in California, both publicly owned utilities and investor-owned utilities. In these comments, we explain why the PD does not satisfy the requirements of AB 32, the Global Warming Solutions Act of 2006, and offer suggestions to both make the PD a more useful recommendation to the California Air

Resources Board (CARB) and ensure that the goals of AB 32 can be met. In particular, we are concerned that without more, the framework in the PD would make it impossible for the utilities most in need of reducing their CO2 emissions from financing those reductions.

It would be serious error to adopt this PD without addressing a number of AB 32 statutory requirements including the mandate to ensure equity and cost effectiveness of proposed regulatory structures; assess the proposed structure's impacts on existing measures to prevent air pollution; and to establish mechanisms to ensure that historically overburdened communities reap economic and environmental benefits and not additional co-pollutant and other burdens that could flow from poorly designed greenhouse gas regulation. If, after addressing the statutory requirements, the CPUC and CEC determine there is a legal basis to proceed with a cap and trade mechanism, emission allowances and auction revenues must be allocated in a way that both reflects the regulatory history that pre-dated AB 32 and does not create the perverse result of stripping the utilities who need to make the most emission reductions of critical investment resources.

I. DISCUSSION

A. Omitted Statutory Provisions Must Be Considered in PD

A number of AB 32's statutory requirements were either only partially considered or were completely ignored in the PD CARB is required by law to consider these requirements before it adopts its scoping plan, regulations, and particularly regulations that establish a market-based regime in California. Without considering these requirements, this PD is simply not a useful recommendation to CARB. The CEC and the CPUC should address the statutory requirements now, at this early stage, because these statutory requirements are *foundational* to establishing an AB 32-compliant greenhouse gas regulatory system.

<u>AB 32 statutory provisions that must be incorporated in the PD:</u>

1. **Cal. H&S § 38501(h)**

> *It is the intent of the Legislature that the State Air Resources Board design emissions reduction measures to meet the statewide emissions limits for greenhouse gases established pursuant to this division in a manner that minimizes costs and maximizes benefits for California's economy, improves and modernizes California's energy infrastructure and maintains electric system reliability, maximizes additional environmental and economic co-benefits for California, and complements the state's efforts to improve air quality.*

This PD gives consideration to some concepts in this statutory provision such as minimizing cost and maximizing benefits for California's economy; however that consideration is largely conclusory without meaningful analysis. It is an open question whether a cap and trade program will accomplish any of the goals outlined in this provision. The PD fails to evaluate its proposals against this criteria. The CPUC and CEC should carefully incorporate this statutory provision into the proposed regulatory structure and then evaluate the recommendation against this provision prior to submitting it to CARB.

Further, the PD wholly omits any discussion of how its recommendations will maximize environmental co-benefits and complement the state's efforts to improve air quality. The PD's cap-and-trade proposal has the potential to increase harmful air pollutants in areas that are already disproportionately affected. Carbon impacts may be global, but its co-pollutants impacts are local. The toxic co-pollutants associated with an emission source may persist and concentrate around the emitting facilities, impacting the health of nearby workers and residents. As stated in the Market Advisory Committee report:[1]

> Although CO2 itself is widely dispersed and does not present a local health concern, the uneven distribution of mitigation efforts could affect facility-specific emissions of "co-pollutants." It will therefore be important to anticipate and address concerns about emissions hotspots ***early in the design process***. [Emphasis added].

Avoiding disproportionate criteria air pollutant and toxic emission impacts, and protecting and benefiting California's most vulnerable communities is clearly an important goal of AB 32, as it is mandated a number of times in the text of the statute.[2] Without due consideration of the environmental impacts and benefits of these regulations, including the impacts on historically disadvantaged communities, the PD fails to address key provisions of AB 32's mandate and thus fails to provide a comprehensive recommendation to guide CARB in developing appropriate regulation.

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[1] Recommendations of the Market Advisory Committee to the California Air Resources Board, June 30, 2007.

[2] Cal. H&S Code §§ 38501(f); 38501(h); 38561(d); 38561(g); 38562(b)(2); 38562(b)(4); 38562(b)(6); 38565; 38570(b); 38591.

2. Cal. H&S § 38562(b)(1)

Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions.

The PD does not contemplate whether its proposed regulatory design is equitable, nor does it provide any analysis of cost effectiveness. Lip service is paid to minimizing cost and maximizing benefits, with an assumption that this is a built-in element of cap and trade programs; but there is no guarantee that a cap and trade system will be more cost effective or equitable than other types of regulation. Much more detailed analysis is needed. This PD should explicitly evaluate the proposed regulatory framework against the criteria in this provision. Appropriate consideration of this provision could avoid punitive and counterproductive results as discussed in part I.B. of these comments.

3. Cal. H&S § 38662(b)(2)

Ensure that activities undertaken to comply with the regulations do not disproportionately impact low-income communities.

The PD gives no consideration to the impacts of its recommendations on low-income or working class communities that have historically borne the greatest burden associated with industrial pollution. AB 32 mandates such consideration in numerous sections of the statute.[3] CARB has convened a Global Warming Environmental Justice Advisory Committee (EJAC) so that

[3] Cal. H&S Code §§ 38561(g); 38565; 38591(a)

historically overburdened communities can provide direct input during the regulatory process. The EJAC should be consulted to provide input about proposed decisions that could impact low-income and working class communities. The Commissions' policies need to address the potential economic impacts of climate regulation, including higher energy prices and other indirect economic impacts. As is stated in AB 32, impacts to low-income communities must be addressed in designing a regulatory framework for AB 32. This is not a consideration that can be treated only as an afterthought or even just before decisions are made, but must be incorporated at every stage in the CPUC and CEC process.

4. Cal. H&S § 38662(b)(3)

> *Ensure that entities that have voluntarily reduced their greenhouse gas emissions prior to the implementation of this section receive appropriate credit for early voluntary reductions.*

This provision should be directly addressed in the PD. It gets only a passing mention in the discussion of auctioning emission allowances. Consideration must be given to designing mechanisms that will guarantee that entities will receive credit for early voluntary reductions against future mandatory reduction requirements.

5. Cal. H&S § 38662(b)(4)

Ensure that activities undertaken pursuant to the regulations complement, and do not interfere with, efforts to achieve and maintain federal and state ambient air quality standards and to reduce toxic air contaminant emissions.

The PD says nothing at all about this requirement. Yet there is a very real, well known danger that the cap and trade system could interfere with efforts to reduce air pollution and toxic emissions in some of the most contaminated air basins in the United States, such as the South Coast and San Joaquin Valley air basins. Air pollution and resulting health impacts is a critical concern to many who live and work in California's most polluted air basins. CARB is prohibited from adopting a structure that does not address ambient air quality standards and toxic pollutant emissions. The failure of the PD to even begin to consider the impact of its proposal on emissions of criteria and toxic air pollutants makes it nearly useless as a recommendation to CARB.

Forethought and leadership is needed at this stage to ensure that protections are built into the implementation of AB 32 to avoid compounding air problems in certain regions. The PD should consider this problem and provide a recommendation on how to avoid undermining air pollution control laws and instead ensure that a regulatory structure will improve air quality in the most contaminated areas. (See discussion in section 3.)

6. Cal. H&S § 38662(b)(5)

Consider cost-effectiveness of these regulations.

Cost-effectiveness is a concept that appears to be assumed as a feature of any cap and trade program, however, additional explanation is needed for how and why cap and trade is cost effective for the California electric utility system. (See discussion in section 2.) Cost effectiveness is a *relative* measure – does one regulatory structure get more reductions per dollar spent than another. The PD makes no effort to document or support with any evidence its conclusion that a cap and trade system will cost less than any of a host of other alternatives. It simply relies on a superficial assertion of economic efficiency.

Because cap-and-trade creates potentially lucrative opportunities for cheating, leads to unpredictable fluctuations in energy prices and may not offset high power costs for consumers, other options should be seriously explored.

Margaret Taylor from the Goldman School of Public Policy at Berkeley argues that the cap and trade concept might not be well suited for California due to the lack of mature technology to adopt, the fact that emitters are not generally the entities that do the research on new technology and questions about whether the volatility of allowance/auction prices could lessen incentives for research and development.[4] Serious questions remain about

[4] http://www.arb.ca.gov/cc/ejac/capandtrademtaylor.pdf

whether cap and trade is actually the most economically efficient solution for California and these questions must be discussed in this PD.

7. Cal. H&S § 38662(b)(6)

Consider overall societal benefits, including reductions in other air pollutants, diversification of energy sources, and other benefits to the economy, environment, and public health.

Consideration must be given to the distribution of benefits from a cap and trade program. As discussed in Section I.B., the revenues from any auction of emission allowances must flow back to the utilities and communities that need them most. AB 32 must become an engine for high emission utilities to invest in energy efficiency and low or zero emission generation.

8. Cal. H&S § 38662(b)(7)

Minimize the administrative burden of implementing and complying with these regulations.

Although minimizing the administrative burden is discussed in the PD as an element inherent in a cap and trade program, the PD fails to consider the additional administrative burden flowing from a cap and trade program itself. The CPUC and CEC should give consideration to costs associated with a range of activities such as registering allowances and auction credits, cheating, false credits, contract shuffling, monitoring compliance, enforcement activities, measuring in-state carbon emissions and administratively verifying out of state emissions. These costs could be quite significant and must be considered when evaluating the relative benefits of different regulatory structures.

9. Cal. H&S § 38565

> *The state board shall ensure that the greenhouse gas emission reduction rules, regulations, programs, mechanisms, and incentives under its jurisdiction, where applicable and to the extent feasible, direct public and private investment toward the most disadvantaged communities in California and provide an opportunity for small businesses, schools, affordable housing associations, and other community institutions to participate in and benefit from statewide efforts to reduce greenhouse gas emissions.*

The PD says nothing about this requirement. California's communities should secure significant benefits from the auction revenues if a cap and trade program is implemented. See discussion in section 7 above.

10. Cal. H&S § 38570(b)

> *Prior to the inclusion of any market-based compliance mechanism in the regulations, to the extent feasible and in furtherance of achieving the statewide greenhouse gas emissions limit, the state board shall do all of the following:*
>
> a. *Consider the potential for direct, indirect, and cumulative emission impacts from these mechanisms, including localized impacts in communities that are already adversely impacted by air pollution.*
> b. *Design any market-based compliance mechanism to prevent any increase in the emissions of toxic air contaminants or criteria air pollutants.*
> c. *Maximize additional environmental and economic benefits for California, as appropriate.*

Since this PD is proposing to move forward with market based compliance mechanisms, any such mechanisms must be evaluated in the context of provisions 1-3 above ***prior to*** any market-based system being adopted. Amazingly, the PD completely ignores this explicit statutory mandate. The European Union carbon trading program proved disastrous to air pollution control efforts and undermined efforts to stimulate technological innovation.[5] The Legislature was aware of this failed cap and trade program and deliberately set specific requirements that must be fulfilled before such a system is adopted for controlled GHG emissions. If the Commissions chooses to go forward with a cap and trade proposal, the decision can only be made after careful evaluation of the likely impacts on the elements outlined in AB 32's mandate.

Further, as is made clear in AB 32 a number of times, the co-pollutant problem and the co-benefit distribution must be considered in designing a regulatory framework. To avoid the creation of hot spots, trades or auction purchases that increase actual net co-pollutant emissions for the disadvantaged areas could be prohibited. Trades that simply maintain rather than decrease emissions into disadvantaged areas could also be limited.[6]

B. The PD Must Ensure an Equitable Regulatory Framework

After the PD is revised to address all of the requirements of AB 32, and if the Commissions then determine that there is evidence that supports proceeding with a market-based system, the system will require several

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[5] See Larry Lohmann, *Carry on polluting,* New Scientist, December 2, 2006.
[6] Alice Kaswan (supra) Environmental Justice and Domestic Climate Change Policy p. 34.

additional features to achieve an equitable and workable system that will achieve the emission reductions required by AB 32.

We understand the economic rationale for auctions in lieu of a system of 100% free allocation of emission allowances. The 100% free allocation in the EU Emissions Trading Scheme has been a failure that should not be replicated in California. However, the CPUC must recognize that all utilities do not start with an equal set of regulatory structures, history and incentives. The Commissions should avoid creating a situation where it is economically impossible for the utilities most in need of emission reductions from funding the actions needed.

The statute is very clear that CARB must distribute emission allowances in a manner that is equitable:

> Design the regulations, including distribution of emissions allowances where appropriate, in a manner that is equitable, seeks to minimize costs and maximize the total benefits to California, and encourages early action to reduce greenhouse gas emissions. [Cal. H&S § 38562(b)(1)]

Equity requires that the status of all entities affected by AB 32 be considered. The PD should be revised to incorporate consideration for the Southern California Munis, particularly the Los Angeles Department of Water and Power, because an auction system that does not account for their pre-AB 32 contractual obligations could be economically disastrous.

Operating in a pre-AB 32 world, the Southern California Munis obligated themselves to purchase power from the Intermountain Power

Project (IPP) in Utah. In fact, LADWP must purchase energy that currently represents nearly 50% of its needs from IPP until 2027. This is an obligation that cannot be broken. If allocations and auction revenues do not take into account this unique situation, the amount the Southern California Munis would have to pay to cover out of state emissions could drain the munis' treasuries and leave them without the ability to invest in emission reduction strategies. This would thwart the goals of AB 32. Auction revenues should flow to the areas that need it most with conditions to ensure that the funds are used solely to reduce greenhouse gas emissions.

In addition to LADWP, five other Southern California Munis are similarly obligated.[7] The PD should include a realistic and practical program to help LADWP and other similarly situated entities transition to low-carbon utilities. Without such provisions, the goals of the statute would not be met and the proposed regulatory structure would be effectively punitive and counterproductive for the Southern California Munis.

Thus, to the extent that auctions are used, the proceeds must:

(1) Protect customers from disproportionate rate increases; and

(2) help fund the transition for the Southern California Munis.

Absent a policy that helps the Southern California Munis make this transition, these entities will drain their resources and have no prospect of reducing carbon dioxide emissions or reliance on coal, thus failing to

[7] The 5 others entities are the Cities of Anaheim, Riverside, Pasadena, Burbank and Glendale.

accomplish the overall goals of AB 32. One possible solution would be to build into the framework a system that redirects the funds obtained from a regulated entity's expenditures during auction to assist *that entity* invest in low or zero emission generation and other programs to reduce its carbon emissions.

II. CONCLUSION

The PD must be revised to explicitly address all of the requirements of AB 32. If the commissions determine that proceeding with a market based structure is appropriate, emission allowances and auction proceeds must be equitably allocated to promote the Southern California Muni's ability to comply with AB 32.

Dated: February 28, 2008

Respectfully submitted,

_____________/s/_____________

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CERTIFICATE OF SERVICE

I, Bonnie Heeley, declare that on February 28, 2008, I deposited copies of the attached Comments of the Coalition of California Utility Employees on the Proposed Decision Regarding Greenhouse Gas Regulatory Strategies in the United States mail at South San Francisco, California, with first class postage thereon fully prepaid and addressed to the following:

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Executed at South San Francisco, CA on February 28, 2008.

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